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30 Dist.
Maine

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CONGRESS OF THE UNITED STATES

House of Representatives

Washington, D.C.

Minority Views of Frank Fellows
Member of the Committee

During the war, documents of the State and other departments of Government, some marked "top secret", were taken from the files by certain individuals. Several hundred of these documents were found in New York City in the office of the publisher of a magazine called Amerasia. The publisher's name was Jaffe. The author of the resolution under which this committee assumed jurisdiction stated upon the floor of the House, "The President authorized these arrests to be made and the arrests were forbidden by the State Department." Following a debate, Resolution 430 passed the House. It provides for a thorough investigation of "all the circumstances with respect to the disposition of the charges of espionage and the possession of documents stolen from secret government files."

Three men, viz: Jaffe, Larson and Roth, were indicted for conspiracy to violate Sections 100, 101, 234 and 235 of Title 18 of the United States Code.

Section 101 is as follows:

"Section 101 of Title 18 - Receiving stolen public property. Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than \$5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender."

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In the case of Mr. Roth, the Government entered a nolle prosequi.

In the case against Larson, as stated by the majority report, a fine of \$500 was suggested by the attorneys for the Department of Justice, and was imposed by the Court after a plea of nolle contendere was offered by the defendant and accepted by the Court.

Jaffe entered a plea of guilty to the indictment, and a fine of \$5000 was recommended by the U.S. Attorney, H. M. Hitchcock, as stated in the majority report. The Court imposed a fine of \$2,500, which was the figure suggested and requested by Jaffe's own attorney.

I can agree with the committee report in part. I disagree with some of the conclusions drawn.

When Larson was arrested at his home in Washington, D.C., the documents found in his possession and seized included:

"93 from the files of, or prepared by, the State Department, including 14 originals or duplicate originals and 5 copies of a secret classification; 13 originals or duplicate originals and 3 copies of a confidential classification;

144 from the files of, or prepared by, ONI, including 7 originals or duplicate originals of a secret classification and 24 originals or duplicate originals and 3 copies of a confidential classification;

8 from the files of, or prepared by, MID, including 1 secret original or duplicate original and 1 copy of a secret classification and 2 copies of a confidential classification;

9 from the files of, or prepared by, the War Department, including 2 copies of a secret classification and 3 originals or duplicate originals of a confidential classification;

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8 from the files of, or prepared by, OSS, including
1 original or duplicate original of a confidential
classification."

Larson, when arrested, was a research specialist in the Far East Division of the Department of State. The Department of State had no system worthy of the name for protecting the files of that department. A man with a gold badge could, without question, carry away any document he wished. All he needed was a gold badge, and this could be borrowed.

I can readily understand the committee's point that there would be difficulty in convicting Roth, who is referred to in the report as a naval officer advanced in rating over the objection of men in the Department.

I can readily understand some of the difficulties that might be encountered in prosecuting Larson, as an individual. The charge, however, was conspiracy to violate certain sections of the United States Code,

The Committee report states, "Jaffe had many of the 'items' in his possession at the time of his arrest, and it could be proved that Larson, at one time, handled a few of them. This at best would only establish a prima facie case against these two." A prima facie case is a good place to start.

The majority report cites cases where the Court scrupulously guarded rights of a man when arrested or while being placed under arrest or under a search and seizure respecting his own property.

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but neglects to point out that the Court from the beginning has drawn a clear distinction between stolen or contraband property and property belonging to the defendant himself. These papers were not the property of the defendants; these papers were not from the defendants' personal files; these papers belonged to the Government of the United States.

In the case of Mr. Jaffe, who seemed to be the principal, I am unable to see why the government accepted a \$2,500 fine. He thought the government had a case or he would not have paid even \$500. The Government thought it had a case or it would not have presented it to the Grand Jury. He had filed no motion to suppress. At the time of his arrest the following papers were seized in the Amerasia Office in New York City:

- "267 prepared by the State Department, including 2 copies of a top secret classification, 20 originals or duplicate originals and 14 copies of a secret classification, and 51 originals or duplicate originals and 14 copies of a confidential classification.
- 50 prepared by OSS, including 2 originals or duplicate originals and 1 copy of a secret classification and 11 originals or duplicate originals of a confidential classification;
- 19 prepared by CNI, including 1 original or duplicate original of a secret classification and 3 originals or duplicate originals of a confidential classification;
- 34 prepared by MID, including 9 copies of a secret classification, 1 original or duplicate original and 11 copies of a confidential classification;

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58 prepared by OWI, including 3 copies of a secret classification, 1 original or duplicate original and 4 copies of a confidential classification.

Jaffe was affiliated with the National League of American Writers, American Council of Soviet Relations, National Council of American-Soviet Friendship, American League for Peace and Democracy, and American Friends of the Chinese people."

He was photographing and publishing some of them, thereby through the medium of his magazine, at least, selling the contents of some of the classified documents of this government at the time when the United States was fighting for its very existence. These papers were seized from Jaffe at the time of his arrest in his business establishment where he was publishing a magazine. They were not his own documents. They were not seized as the result of searching his files. They were found in suit cases and pasteboard containers on the tables and desks of his business offices. I do not see how anybody could claim these papers were illegally seized. The circumstances clearly indicate that Roth, who had previously worked for him in this very office, was delivering papers to him. It appears that certain documents found in the possession of Jaffe at the time of his arrest were copies of official documents of various departments written in long hand by Roth or typewritten on Roth's machine. It also appears, as indicated by the majority report, and herein, supra, that Larson at one time handled a few of the documents found in the possession of Jaffe at the time of his arrest.

Jaffe either took these documents himself, or his confederates

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took them for him. And two of the documents found were top secret, so marked and so designated. I can see no point in arguing that these papers may not have been of much value. The thieves thought they were. The government agencies so adjudged them. And the facts show that the defendants could have had their choice of any documents they wished; they were given no protection so far as the State Department was concerned.

The Justice Department attorney recommended fines, after stating in open court that the actions of two of the defendants "did not involve any element of disloyalty". Disloyalty to whom? If a man or his confederate walks into the State Department and carries away top secrets of that department during a great war, photographs them, published their contents, and sells them through the medium of his magazine, few people would see anything in such conduct that would come under the title of "loyalty" to the United States.

The report undertakes to argue the weakness of the government's case.

First: It suggests that the classification was not standardized practice. The Statute says nothing about this.

Second: That few, if any, of the identifiable classified documents had any real importance in our national defense. Who is to be the judge of this? May I call attention to the fact that one of the men who testified before our committee said that possession of one of these documents in particular was a threat against the

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security of this country.

Third: That many of these documents had already been given publicity. I have no recollection that more than one had been given publicity, and the publication of this one so aroused the State Department officials that they started at once to investigate the "leaks".

Fourth: The majority report states that many of the identifiable documents might have had their evidential value destroyed by reason of the possibility of the Court's sustaining the defendants's motion attacking the warrants of arrest. This statement does not impress me, because (first) Jaffe did not file any motion to suppress, (second) any one document possessed in violation of the statute could be sufficient.

I can agree with the committee that, under the decisions, scrupulous care has to be used that searches and seizures of a man's own papers and effects are reasonable, but it has not been pointed out to me what was unreasonable in the seizure of these papers. In any event, Mr. Jaffe and his counsel did not see fit to take any steps to suppress this evidence and the Department of Justice saw fit to present its case to the Grand Jury, - presumably on this evidence.

The cases state that "Search without a warrant is permitted, for evidence connected with the crime and found on the person arrested, or open to view in his immediate vicinity."

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Our Supreme Court stated years ago that search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private tools and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. (Boyd v. U.S. 116 U.S. 616; 29 L. Ed. 746, 6 S. Ct. 524)

I can agree with the committee that there are no recommendations to be made to the Department of Justice. These cases where fines were imposed are closed.

I heartily concur in the recommendations contained in the majority report.

The zeal and efficiency of the Federal Bureau of Investigation were commendable.

I do not question the motives or the good faith of the Department of Justice, nor any of its representatives who handled these cases, but I do disagree with its judgment in estimating the strength of the government's case against Jaffe.